

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JACK E. POLO, <div style="text-align: center;">Petitioner,</div> <div style="text-align: center;">v.</div> United States of America, <div style="text-align: center;">Respondent.</div>	: : : : : : : : : : :	Civ. No. 16-5137 (KM) MEMORANDUM AND ORDER
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------	----------------------------------------------------------------------------------------------

Petitioner is proceeding *pro se* with a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. This Court provided petitioner with the required *Miller* notice and petitioner has indicated his intent to proceed with his § 2255 motion “as-is.” The only proper respondent in a § 2255 motion is the United States. Therefore, this Court will dismiss respondent David D. Ortiz with prejudice.

In accordance with Rule 4(b) of the Rules Governing Section 2255 Proceedings, *see* 28 U.S.C. § 2255 Rule 4(b), the Court has screened the motion for dismissal and determined that dismissal without an answer and a reply is not warranted.

Accordingly, IT IS this 20th day of October, 2016,

ORDERED that respondent Warden David D. Ortiz is dismissed with prejudice from this action, and the United States of America is substituted as Respondent; and it is further

ORDERED that within forty-five (45) days of the date of the entry of this Order, the United States shall electronically file and serve an answer to the § 2255 motion (Dkt. No. 4); and it is further

ORDERED that the answer shall respond to the allegations and grounds of the motion and shall adhere to Rule 5 of the Rules Governing Section 2255 Proceedings; and it is further

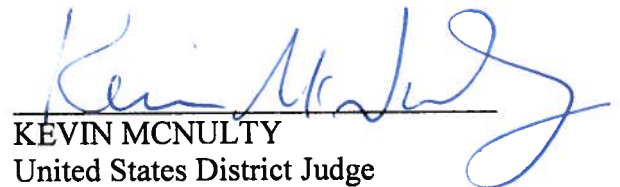
ORDERED that the answer shall address the merits of each claim raised in the motion as well as whether the motion is timely; and it is further

ORDERED that the answer shall contain an index of exhibits; and it is further

ORDERED that if the answer refers to briefs or transcripts, orders, and other documents from prior proceedings, then the United States shall serve and file them with the answer; and it is further

ORDERED that petitioner may serve and file a reply to the answer within forty-five (45) days after the answer is filed; and it is further

ORDERED that the Clerk of Court shall serve this Order on petitioner by regular U.S. mail.



KEVIN MCNULTY
United States District Judge